

Part 2 Proceedings

31A-27a-201 Receivership court's seizure order.

- (1) The commissioner may file in the Third District Court for Salt Lake County a petition:
 - (a) with respect to:
 - (i) an insurer domiciled in this state;
 - (ii) an unauthorized insurer; or
 - (iii) pursuant to Section 31A-27a-901, a foreign insurer;
 - (b) alleging that:
 - (i) there exists grounds that would justify a court order for a formal delinquency proceeding against the insurer under this chapter; and
 - (ii) the interests of policyholders, creditors, or the public will be endangered by delay; and
 - (c) setting forth the contents of a seizure order considered necessary by the commissioner.
- (2)
 - (a) Upon a filing under Subsection (1), the receivership court may issue the requested seizure order:
 - (i) immediately, ex parte, and without notice or hearing;
 - (ii) that directs the commissioner to take possession and control of:
 - (A) all or a part of the property, accounts, and records of an insurer; and
 - (B) the premises occupied by the insurer for transaction of the insurer's business; and
 - (iii) that until further order of the receivership court, enjoins the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.
 - (b) A person having possession or control of and refusing to deliver any of the records or assets of a person against whom a seizure order is issued under this Subsection (2) is guilty of a class B misdemeanor.
- (3)
 - (a) A petition that requests injunctive relief:
 - (i) shall be verified by the commissioner or the commissioner's designee; and
 - (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.
 - (b) The commissioner shall provide only the notice that the receivership court may require.
- (4)
 - (a) The receivership court shall specify in the seizure order the duration of the seizure, which shall be the time the receivership court considers necessary for the commissioner to ascertain the condition of the insurer.
 - (b) The receivership court may from time to time:
 - (i) hold a hearing that the receivership court considers desirable:
 - (A)
 - (I) on motion of the commissioner;
 - (II) on motion of the insurer; or
 - (III) on its own motion; and
 - (B) after the notice the receivership court considers appropriate; and
 - (ii) extend, shorten, or modify the terms of the seizure order.
 - (c) The receivership court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to commence a formal proceeding under this chapter.

- (d) An order of the receivership court pursuant to a formal proceeding under this chapter vacates the seizure order.
- (5) Entry of a seizure order under this section does not constitute a breach or an anticipatory breach of a contract of the insurer.
- (6)
 - (a) An insurer subject to an ex parte seizure order under this section may petition the receivership court at any time after the issuance of a seizure order for a hearing and review of the basis for the seizure order.
 - (b) The receivership court shall hold the hearing and review requested under this Subsection (6) not more than 15 days after the day on which the request is received or as soon thereafter as the court may allow.
 - (c) A hearing under this Subsection (6):
 - (i) may be held privately in chambers; and
 - (ii) shall be held privately in chambers if the insurer proceeded against requests that it be private.
- (7)
 - (a) If, at any time after the issuance of a seizure order, it appears to the receivership court that a person whose interest is or will be substantially affected by the seizure order did not appear at the hearing and has not been served, the receivership court may order that notice be given to the person.
 - (b) An order under this Subsection (7) that notice be given may not stay the effect of a seizure order previously issued by the receivership court.
- (8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of the police department of a municipality in the state to furnish the commissioner with necessary deputies or officers to assist the commissioner in making and enforcing the seizure order.
- (9) The commissioner may appoint a receiver under this section. The insurer shall pay the costs and expenses of the receiver appointed.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-27a-202 Commencement of formal delinquency proceeding.

- (1) A formal delinquency proceeding against a person shall be commenced by filing a petition in the name of the commissioner or department.
- (2)
 - (a) The petition required by Subsection (1):
 - (i) shall state:
 - (A) the grounds upon which the proceeding is based; and
 - (B) the relief requested; and
 - (ii) may include a request for restraining orders and injunctive relief as described in Section 31A-27a-108.
 - (b) Upon the filing of a petition, the commissioner shall forward a notice of the petition by first-class mail or electronic communication, as permitted by the receivership court, to the commissioners and guaranty associations in states in which the insurer did business.
- (3)
 - (a) A petition that requests injunctive relief:
 - (i) shall be verified by the commissioner or the commissioner's designee; and

- (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.
- (b) The commissioner shall provide only the notice the receivership court requires.
- (4) If a temporary restraining order is requested:
 - (a) the receivership court may issue an initial order containing the relief requested;
 - (b) the order shall state the time and date of its issuance;
 - (c) the receivership court shall set a time and date for the return of summons:
 - (i) not more than 10 days from the time and date the initial order is issued; and
 - (ii) at which time the person proceeded against may appear before the receivership court for a summary hearing; and
 - (d) the order may not continue in effect beyond the time and date set for the return of summons, unless the receivership court expressly enters one or more orders extending the restraining order.
- (5)
 - (a) If no temporary restraining order is requested, the receivership court shall cause summons to be issued.
 - (b) The summons shall specify:
 - (i) a return date not more than 30 days after the day on which the summons is issued; and
 - (ii) that an answer shall be filed at or before the return date.

Amended by Chapter 297, 2011 General Session

31A-27a-203 Return of summons and summary hearing.

- (1) The receivership court shall hold a summary hearing at the time and date for the return of summons on a petition to commence a formal delinquency proceeding.
- (2) If a person is not served with summons on a petition to commence a formal delinquency proceeding and fails to appear for the summary hearing, the receivership court shall:
 - (a) continue the summary hearing not more than 10 days;
 - (b) provide for alternative service of summons upon the person; and
 - (c) extend any restraining order.
- (3) Upon a showing of good faith efforts to effect personal service upon a person who fails to appear for a continued summary hearing, the receivership court shall order notice of the petition to commence a formal delinquency proceeding to be published. The order and notice shall specify:
 - (a) a return date not less than 10 nor more than 20 days after the day on which notice is published; and
 - (b) that the restraining order is extended to the continued hearing date.
- (4) If a person fails to appear for a summary hearing on a petition to commence a formal delinquency proceeding after service of summons, the receivership court shall enter judgment in favor of the commissioner against that person.
- (5)
 - (a) A person who appears for the summary hearing on a petition to commence a formal delinquency proceeding shall file its answer at the hearing and the receivership court shall:
 - (i) determine whether to extend any temporary restraining order pending final judgment; and
 - (ii) set the case for trial on a date not more than 10 days from the day on which the summary hearing is held.
 - (b) The receivership court may not grant a continuance for filing an answer.

Enacted by Chapter 309, 2007 General Session

31A-27a-204 Proceedings for expedited trial -- Continuance -- Evidence -- Discovery.

- (1)
 - (a) The receivership court shall proceed to hear the case on the petition to commence a formal delinquency proceeding:
 - (i) at the time and date set forth for trial;
 - (ii) without a jury; and
 - (iii) without unnecessary delay.
 - (b) To the extent practicable, the receivership court shall give precedence to the matter over all other matters.
 - (c) To the extent authorized by law, the receivership court may assign the matter to another judge if necessary to comply with the need for expedited proceedings under this chapter.
- (2) A continuance for trial shall be granted only in extreme circumstances.
- (3) The receivership court shall admit as self authenticated a certified copy of the following when offered by the commissioner:
 - (a) a financial statement made by the insurer or an affiliate;
 - (b) an examination report of the insurer or an affiliate made by or on behalf of the commissioner; or
 - (c) any other document filed with any insurance department by the insurer or an affiliate.
- (4) The facts contained in an examination report of the insurer or an affiliate made by or on behalf of the commissioner is presumed to be true as of the date of the hearing if the examination is made as of a date not more than 270 days before the day on which the petition is filed. The presumption:
 - (a) is rebuttable; and
 - (b) shifts the burden of production and persuasion to the insurer.
- (5) Discovery:
 - (a) is limited to grounds alleged in the petition; and
 - (b) shall be concluded on an expedited basis.

Enacted by Chapter 309, 2007 General Session

31A-27a-205 Decision and appeals.

- (1) The receivership court shall enter judgment on the petition to commence formal delinquency proceeding within 15 days after the day on which the evidence is concluded.
- (2)
 - (a) An order entered pursuant to Subsection (1) is final when entered.
 - (b) An appeal shall be:
 - (i) handled on an expedited basis; and
 - (ii) taken within five days of the day on which judgment is entered.
- (3)
 - (a) Absent entry of an order staying the order pursuant to Subsection (4), the order has full force and effect and the receiver shall carry out the order's terms and this chapter.
 - (b) A request for reconsideration, review, or appeal, or posting of a bond, may not dissolve or stay the judgment.
- (4)
 - (a) The following motions shall first be presented to the receivership court:
 - (i) a motion for a stay of a judgment;
 - (ii) a motion for approval of a supersedes bond; or

- (iii) a motion for other relief pending appeal.
- (b) Except for a grant of a petition for rehabilitation which shall remain in effect pending a decision on appeal, during the pendency of an appeal the receivership court may do any of the following in accordance with the Utah Rules of Civil Procedure:
 - (i) suspend an order entered under Subsection (1);
 - (ii) modify an order entered under Subsection (1); or
 - (iii) make any other appropriate order governing the enforceability of an order entered under Subsection (1).
- (c) The receivership court or an appellate court to which the matter is presented may condition any relief it grants under this Subsection (4) on the filing of a bond or other appropriate security with the receivership court.
- (5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal regardless of the appeal's ultimate disposition.
- (6) The reversal or modification on appeal of an order of rehabilitation or liquidation does not affect the validity of an act of the receiver pursuant to the order unless the order is stayed pending appeal.

Amended by Chapter 297, 2011 General Session

31A-27a-206 Confidentiality.

- (1)
 - (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a judicial review under Section 31A-27a-201:
 - (i) all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, are confidential; and
 - (ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall be held by the clerk in a confidential file as permitted by law.
 - (b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):
 - (i) except to the extent necessary to obtain compliance with an order entered in connection with the proceeding; and
 - (ii) unless and until:
 - (A) the Third District Court for Salt Lake County, after hearing argument in chambers, orders otherwise;
 - (B) the insurer requests that the matter be made public; or
 - (C) the commissioner applies for an order under Section 31A-27a-207.
- (2)
 - (a) If the recipient agrees to maintain the confidentiality of the document, material, or other information, the commissioner or rehabilitator may share a document, materials, or other information in the possession, custody, or control of the department, pertaining to an insurer that is the subject of a delinquency proceeding under this chapter with:
 - (i) another state, federal, and international regulatory agency;
 - (ii) the National Association of Insurance Commissioners and its affiliates or subsidiaries;
 - (iii) a state, federal, and international law enforcement authority;
 - (iv) an auditor appointed by the receivership court in accordance with Section 31A-27a-805; or
 - (v) a representative of an affected guaranty association.
 - (b) If the domiciliary receiver believes that certain information is sensitive, the receiver may share that information subject to a continuation of the confidentiality obligations beyond the period allowed in Subsection (3).

- (c) This section does not limit the power of the commissioner to disclose information under other applicable law.
- (3)
 - (a) A domiciliary receiver shall permit a commissioner or a guaranty association of another state to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information, if the commissioner or the guaranty association of another state agrees:
 - (i) to maintain the confidentiality of the record; and
 - (ii) that the record will be used only for regulatory or guaranty association purposes.
 - (b) Access to a record under this Subsection (3) may be limited to normal business hours.
 - (c) If the domiciliary receiver believes that certain information described in this Subsection (3) is sensitive and disclosure might cause a diminution in recovery, the receiver may apply for a protective order imposing additional restrictions on access.
- (4)
 - (a) The confidentiality obligations imposed by this section shall end upon the entry of an order of liquidation against the insurer, unless:
 - (i) otherwise agreed to by the parties; or
 - (ii) pursuant to an order of the receivership court.
 - (b) A continuation of confidentiality as provided in Subsection (2) does not apply to an insurer record necessary for a guaranty association to discharge its statutory responsibilities.
- (5) A waiver of an applicable privilege or claim of confidentiality does not occur as a result of a disclosure, or any sharing of documents, materials, or other information, made pursuant to this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-207 Grounds for rehabilitation or liquidation.

- (1) The commissioner may file in the Third District Court for Salt Lake County a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation on any one or more of the following grounds:
 - (a) the insurer is impaired;
 - (b) the insurer is insolvent;
 - (c) subject to Subsection (2), the insurer is about to become insolvent;
 - (d)
 - (i) the insurer neglects or refuses to comply with an order of the commissioner to make good within the time prescribed by law any deficiency;
 - (ii) if a stock company, if its capital and minimum required surplus is impaired; or
 - (iii) if a company other than a stock company, if its surplus is impaired;
 - (e) the insurer, its parent company, its subsidiary, or its affiliate:
 - (i) converts, wastes, or conceals property of the insurer; or
 - (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns, hypothecates, or removes the property of the insurer;
 - (f) the insurer is in such condition that the insurer could not meet the requirements for organization and authorization as required by law, except as to the amount of:
 - (i) the original surplus required of a stock company under Sections 31A-5-211 and 31A-8-209; and
 - (ii) the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;

- (g) the insurer, its parent company, its subsidiary, or its affiliate:
 - (i) conceals, removes, alters, destroys, or fails to establish and maintain records and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Section 31A-2-203; or
 - (ii) fails to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;
- (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the time of instituting a proceeding under this chapter, it appears to the commissioner that upon good cause shown, it is not in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer;
- (i) the insurer is in such condition that the further transaction of business would be hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its policyholders, creditors, or the public;
- (j) there is reasonable cause to believe that:
 - (i) there has been:
 - (A) embezzlement from the insurer;
 - (B) wrongful sequestration or diversion of the insurer's property;
 - (C) forgery or fraud affecting the insurer; or
 - (D) other illegal conduct in, by, or with respect to the insurer; and
 - (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an amount threatening the solvency of the insurer;
- (k) control of the insurer is in a person who is:
 - (i) dishonest;
 - (ii) untrustworthy; or
 - (iii) so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public;
- (l) if:
 - (i) a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, shareholder, or other person:
 - (A) refuses to be examined under oath by the commissioner concerning the insurer's affairs, whether in this state or elsewhere; or
 - (B) if examined under oath, refuses to divulge pertinent information reasonably known to the person; and
 - (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails promptly and effectively to terminate:
 - (A) the employment or status of the person; and
 - (B) all of the person's influence on management;
- (m) after demand by the commissioner under Section 31A-2-203 or under this chapter, the insurer fails to promptly make available for examination:
 - (i) any of its own property, accounts, or records; or
 - (ii) so far as it pertains to the insurer, property, accounts, or records of:
 - (A) a subsidiary or related company within the control of the insurer; or
 - (B) a person having executive authority in the insurer;
- (n) without first obtaining the written consent of the commissioner, the insurer:
 - (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or 31A-16-103, substantially its entire property or business; or

- (ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;
 - (o) the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state;
 - (p) within the previous five years the insurer willfully and continuously violates:
 - (i) its charter or articles of incorporation;
 - (ii) its bylaws;
 - (iii) an insurance law of this state; or
 - (iv) a valid order of the commissioner;
 - (q) the insurer fails to pay within 60 days after the due date:
 - (i)
 - (A) an obligation to any state or any subdivision of a state; or
 - (B) a judgment entered in any state, if the court in which the judgment is entered has jurisdiction over the subject matter; and
 - (ii) except that nonpayment is not a ground until 60 days after a good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts;
 - (r) the insurer systematically:
 - (i) engages in the practice of:
 - (A) reaching settlements with and obtaining releases from claimants; and
 - (B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or
 - (ii) attempts to compromise with claimants or other creditors on the ground that it is financially unable to pay its claims or obligations in full;
 - (s) the insurer fails to file its annual report or other financial report required by statute within the time allowed by law;
 - (t) the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in Section 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;
 - (u)
 - (i) the insurer does not comply with its domiciliary state's requirements for issuance to it of a certificate of authority; or
 - (ii) the insurer's certificate of authority is revoked by its state of domicile; or
 - (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.
- (2) For purposes of this section, an insurer is about to become insolvent if it is reasonably anticipated that the insurer will not have liquid assets to meet its current obligations for the next 90 days.

Enacted by Chapter 309, 2007 General Session

31A-27a-208 Entry of order.

- (1) If the commissioner establishes any of the grounds provided in Section 31A-27a-207, the receivership court shall:
- (a) grant the petition; and
 - (b) issue the order of rehabilitation or liquidation requested in the petition.

- (2) Upon the issuance of the order, the commissioner shall forward a copy of the order by first-class mail or electronic communication as permitted by the receivership court to the commissioners and guaranty associations in states in which the insurer did business.

Enacted by Chapter 309, 2007 General Session

31A-27a-209 Effect of order of rehabilitation or liquidation.

- (1) The filing or recording of an order of receivership with the following imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded would have imparted:
 - (a) the Third District Court for Salt Lake County;
 - (b) the recorder of deeds of the county in which the principal business of the insurer is conducted; or
 - (c) in the case of real estate, with the recorder of deeds of the county where the property is located.
- (2) The filing of a petition commencing delinquency proceedings under this chapter or the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an anticipatory breach of any contract or lease of the insurer.
- (3)
 - (a) The receiver may appoint one or more special deputies.
 - (b) A special deputy:
 - (i) has the powers and responsibilities of the receiver granted under this section, unless specifically limited by the receiver; and
 - (ii) serves at the pleasure of the receiver.
 - (c) The receiver may employ or contract with:
 - (i) legal counsel;
 - (ii) one or more actuaries;
 - (iii) one or more accountants;
 - (iv) one or more appraisers;
 - (v) one or more consultants;
 - (vi) one or more clerks;
 - (vii) one or more assistants; and
 - (viii) other personnel as may be considered necessary.
 - (d) A special deputy or other person with whom the receiver contracts under this Subsection (3):
 - (i) is considered to be an agent of the commissioner only in the commissioner's capacity as receiver; and
 - (ii) is not considered an agent of the state.
 - (e) The provisions of any law governing the procurement of goods and services by the state do not apply to a contract entered into by the commissioner as receiver.
 - (f) The compensation of a special deputy, employee, or contractor and all expenses of taking possession of the insurer and of conducting the receivership shall be:
 - (i) determined by the receiver, with the approval of the receivership court in accordance with Section 31A-27a-115; and
 - (ii) paid out of the property of the insurer.
 - (g)
 - (i) If the receiver, in the receiver's sole discretion, considers it necessary to the proper performance of the receiver's duties under this chapter, the receiver may appoint an advisory committee of policyholders, claimants, or other creditors including guaranty associations.

- (ii) The committee described in this Subsection (3)(g) serves:
 - (A) at the pleasure of the receiver; and
 - (B) without compensation and without reimbursement for expenses.
- (iii) The receiver or the receivership court in proceedings conducted under this chapter may not appoint any other committee of any nature.

Enacted by Chapter 309, 2007 General Session